

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:)
)
NATIONAL FORGE COMPANY, *et, al.*)
)
Debtor.)
)
OFFICIAL COMMITTEE OF)
UNSECURED CREDITORS OF)
NATIONAL FORGE COMPANY,)
)
Plaintiff)
)
And)
)
OFFICIAL COMMITTEE OF RETIREES)
OF NATIONAL FORGE COMPANY,)
)
Intervenors)
) C.A. No. 04-21 ERIE
v.)
)
E. ROGER CLARK, both individually and)
as an officer and director of National Forge)
Company; MAURICE J. CASHMAN, both)
individually and as an officer and director of)
National Forge Company; DANA)
BEYELER, both individually and as an)
officer and director of National Forge)
Company; ROBERT A KAEMMERER,)
both individually and as an officer and)
director of National Forge Company;)
DANIEL ANTOS; WILLIAM D. BAILEY;)
RICHARD A. BREWSTER; JAMES E.)
CALDWELL; LARRY CAMPBELL;)
JAMES C. CONFER; RICHARD)
D'ALESSANDRO; DONALD FISSEL;)
JAMES B. HARRIS; THOMAS H.)
JACKSON; ASHOK K. KHARE; CARL J.)
LUPPINO; CLARENCE E. MASON;)
HAROLD MURPHY; PHILIP R.)
NONOSEL; CHARLES R. OLSON; JAMES)
D. RUHLMAN; PHILLIP R. SIMONS;)

GLENN E. TURK; RONALD L. YOUNG;)
BARRY ZISCHKAU; J.P. MORGAN)
CHASE & CO., as a Lender and an Agent on)
behalf of Certain Lenders under Various)
Amendments to Amended and Restated)
Credit Agreement dated April 6, 1998 ;)
FLEET BUSINESS CREDIT)
CORPORATION; and NATIONAL CITY)
BANK OF PENNSYLVANIA,)
)
Defendants)

**PLAINTIFF'S AND INTERVENOR'S RESPONSE TO THE MOTION PURSUANT TO
FED. R.CIV.P. 12(B)(6) AND 56 OF DEFENDANTS E. ROGER CLARK, MAURICE J.
CASHMAN, DANA BEYEALER AND ROBERT A. KAEMMERER AND JOINED BY
DEFENDANTS DANIEL ANTOS, ET AL. AND J.P. MORGAN CHASE & CO., FLEET
BUSINESS CREDIT CORPORATION, AND NATIONAL CITY BANK OF
PENNSYLVANIA**

AND NOW, comes the Official Committee of Unsecured Creditors of National Forge Company, *et al.* and the Official Committee of Retirees of National Forge Company (together with the Official Committee of Unsecured Creditors of National Forge Company, *et al.* the “Committee” or “Plaintiff”), by and through its undersigned counsel, and hereby submits this Response to the Motion Pursuant to Fed.R.Civ.P. 12(b)(6) and 56, along with the accompanying Brief in Opposition to the Motion for Summary Judgment filed by the Defendants E. Roger Clark, Maurice Cashman, Dana Beyeler and Robert A. Kaemmerer (“E. Roger Clark, *et al.*”) and Joined by Defendants Daniel Antos, *et al.*, and J.P. Morgan Chase & Co., Fleet Business Credit Corporation and National City Bank of Pennsylvania (the “Lenders”, together with E.Roger Clark, *et al.* and Daniel Antos, *et al.* the “Defendants”). For the reasons set forth in the accompanying Brief in Opposition, Plaintiff respectfully submits that its causes of action in Counts I, II, III and VII are not barred by Bankruptcy Code § 546(e), and that Counts IV, V and VI are not untimely. Finally, Count VIII should not be limited to the actual Officers and Directors of NFC Holdings. Therefore, Plaintiff requests that this Court enter an order denying

the Defendants' Motion to Dismiss under Rule 12(b)(6) and/or Motion for Summary Judgment under Rule 56 in its/their entirety.

Respectfully submitted,

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